

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
High-Cost Universal Service	)	WC Docket No. 05-337
	)	
Federal-State Joint Board on Universal Service)	)	CC Docket No. 96-45

**COMMENTS OF THE MACRUC MEMBER STATES**

The following MACRUC members consisting of the District of Columbia, the States of Delaware and New Jersey, and the Commonwealths of Virginia and Pennsylvania hereby submit comments in response to three Notice of Proposed Rulemakings (NPRMs) released by the Federal Communications Commission (FCC or Commission) on January 29, 2008.<sup>1</sup> In these NPRMs the Commission seeks comment on (1) the Recommended Decision of the Federal-State Joint Board on Universal Service (Joint Board) regarding high-cost universal service support; (2) the FCC's rules governing the amount of high-cost support provided to competitive eligible telecommunications carriers (ETCs); and (3) the merits of using reverse

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<sup>1</sup> *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1467 (2008) (*Identical Support Rule NPRM*), *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1495 (2008) (*Reverse Auctions NPRM*); *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd (2008) (*Joint Board Comprehensive Reform NBPRM*).

auctions to determine the amount of high-cost universal service support provided to ETCs.

The MACRUC signatories are encouraged by certain findings in the NPRMs and urge the FCC to adopt these modifications as soon as possible. Specifically, the MACRUC concurs in the Commission's tentative conclusion to eliminate the identical support rule and that reverse auctions warrant serious consideration.<sup>2</sup> The MACRUC believes that much of the uncontrolled growth in High Cost funding has come from various access reform actions and the identical support rule for competitive ETCs. Conversely, any reform of the High Cost universal support mechanisms should ensure that the real purpose of high cost support is not compromised.

There are however, many troubling aspects of the *Joint Board Comprehensive Reform NPRM*, as discussed below, that the MACRUC opposes and we urge the Commission not to adopt.

MACRUC ratepayers have paid more than ***\$2 Billion*** in excess of what we have received from the federal Universal Service Fund (FUSF) in just four years (2003 – 2006) *with an increase of over 80% from 2005 to 2006 alone!*<sup>3</sup>

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<sup>2</sup> For example, the MACRUC signatories believe that a pilot program could be used to test reverse auctions as an appropriate method to distribute high-cost support in an effective and equitable manner.

<sup>3</sup> This calculation is derived from the Universal Service Monitoring Report (CC Docket No. 98-202), Table 1.12 on the FCC's web site as reported for the years 2003-2006. The data for 2003 and 2004 are contained in the 2005 report; 2005 data are in the 2006 report and 2006 data are in the 2007 report. Although there have been some corrections to the figures, these and the corrected figures underscore the increasing burden placed on ratepayers in the MACRUC states. Additionally, it has been estimated that the percentage of a consumer's phone bill that goes to the FUSF has grown from 6.8 percent in the first quarter of 2002 to more than ten

Not only must the size of the Fund not increase any more, it must be reduced.<sup>4</sup> Otherwise, the consumers of net contributor states such as the MACRUC states, that already pay more than their fair share for the laudable public policy goal of universal service, will be further burdened with no tangible benefit in return. It is time to reduce the burden of urban states' ratepayers from having to subsidize telephone (and as proposed in the *Joint Board Comprehensive Reform NPRM*, wireless and broadband services) of rural consumers. The citizens of Newark and Camden, New Jersey; Philadelphia, Pennsylvania; and Washington, D.C.,<sup>5</sup> along with countless other cities and communities in the MACRUC region, should not have to help pay for service to rural states when receiving little or no support in return.

There are numerous concerns with this proposal, not the least of which is that the proposed cap at current levels does nothing to reduce the already overburdened ratepayers in donor states, such as the MACRUC states. The *Joint Board Comprehensive Reform NPRM* creates new obligations to fund broadband and mobile services under the guise that the overall fund will not increase. The burden to MACRUC ratepayers, who have contributed over ***\$2 Billion*** in excess of what we have received from the fund in just four years, must be reduced where appropriate so that the real purpose of the high cost

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percent. May, Randolph J. "Universal Service Fund Needs FCC Attention this Year, Policy Analysts Say," Heartland Institute, April 2008.

<sup>4</sup> The MACRUC signatories believe that a primary target for cost reduction should be areas of the FUSF, and the high-cost fund in particular, that witnessed unwarranted growth in the last few years, especially the growth in costs for Competitive Eligible Telecommunications Carrier (CETC) support based on the Identical Support Rule.

<sup>5</sup> For example, the District of Columbia is the only jurisdiction that pays into the high-cost universal service fund without receiving any high-cost funding. Thus, any increase to the high-cost portion of the Fund is particularly disadvantageous to District of Columbia consumers.

fund is not compromised. To simply cap the amount at this time will continue the excessive burden to our ratepayers. Chairman Lisa Polak Edgar of the Florida Public Service Commission is absolutely correct in her concerns that “expanding the scope of the fund to include broadband and mobility could inadvertently increase the fund size.”<sup>6</sup>

As described above, the Recommended Decision does in fact make some very positive recommendations in the elimination of the identical support rule and the use of reverse auctions with the stated goals of eliminating “the use of federal universal service support to subsidize competition and build duplicate networks in high cost areas.” However, this goal and the additional desire to “avoid duplicate support”<sup>7</sup>, are undermined by the proposed “three fund” structure. If the goal is to have one recipient for each fund, it is not possible to avoid duplicate support for a carrier that provides all three services over the same network.

We also concur with recent comments of Commissioner Tate with respect to the Joint Board’s Recommendation: “Some of the recommendations raise questions that need to be addressed in more depth. I especially question whether it is prudent to create three new government-administered funds instead of reforming the existing ones, which are already growing at untenable levels...We must not forget that it is the consumer who ultimately pays universal service contributions, every single month, and thus any

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<sup>6</sup> *Joint Board Comprehensive Reform*, Statement of Lisa Polak Edgar, Joint Board Chair p. 36.

<sup>7</sup> *Joint Board Comprehensive Reform NPRM*, ¶ 53.

increase in the size of the Universal Service Fund will raise the burden on consumers.”<sup>8</sup>

There are also unanswered questions regarding whether the use of federal universal service funds for broadband and mobility build-out to “unserved” areas is even necessary. First, according to a report released by the Commission on February 4, 2008,, “[a]pproximately 99.8 percent of the total U.S. population, have one or more different operators (cellular, PCS, and/or SMR) offering mobile telephone service in the census blocks in which they live.”<sup>9</sup> Therefore, the Commission’s own data indicates that there is no reason to separately fund an expansion of mobile services.

A second, and potentially more explosive concern, is broadband support through the FUSF. The Commission should determine broadband availability before any determination can be made that support for broadband is even necessary from the FUSF. The Commission’s announcement on March 19<sup>th</sup> to expand and improve broadband data collection is an appropriate first step in answering this question. The MACRUC states encourage the Commission to consider other sources of funds to encourage broadband deployment where it is necessary to do so. For example, increased use of federal loans from the Rural Utilities Service and/or tax incentives may be more appropriate sources of targeted support for broadband deployment.

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<sup>8</sup> Remarks of Commissioner Deborah Taylor Tate, Federalist Society, A New Role for an Aging Star: Universal Service in the Age of Competition and Technological Change, National Press Club, February 5, 2008, As Prepared for Delivery.

<sup>9</sup> *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, WT Docket No. 07-71, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Twelfth Report, released February 4, 2008.

Commissioner Tate raised these very same issues in her February 5, 2008 remarks: “How should the proposed Broadband Fund relate to other current existing government programs such as those administered by the federal Department of Agriculture, the many broadband bills that are currently pending in Congress, and the hundreds of state and local projects that have already been undertaken with state and local taxpayer dollars? While we all support the expansion and deployment of broadband to every corner of the Nation, we must do so in a way that is coordinated, efficient, targeted and fiscally responsible.”<sup>10</sup>

The Recommended Decision suggests that the states would administer the new mobility and broadband funds. While we have expressed our opposition to the proposed new funds, the Joint Board raises an issue that is of great interest specifically, “The Joint Board recommends that the Commission adopt policies that encourage states to provide matching funds for Broadband Fund and Mobility Fund support.” By requiring states to establish a matching funding mechanism, we agree that states would have a greater incentive in monitoring high cost funds. Commissioner Landis of the Indiana Utility Regulatory Commission, as part of his recommendation for matching funds, said, “as our former colleague Billy Jack Gregg<sup>11</sup> has pointed out, several states which are among the largest net recipients (disbursements less collections) of funds under the federal universal service program do not have a state universal service program or any other program targeted to

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<sup>10</sup> Remarks of Commissioner Deborah Taylor Tate, Federalist Society, A New Role for an Aging Star: Universal Service in the Age of Competition and Technological Change, National Press Club, February 5, 2008, As Prepared for Delivery

<sup>11</sup> Former Consumer Advocate of West Virginia and member of the National Association of State Utility Consumer Advocates (NASUCA).

address issues such as those addressed in this Recommended Decision.”<sup>12</sup> Four of the nine states who were the highest net support recipients in 2006, apparently do not have intrastate universal service funds and those four states received a net \$497 million from the FUSF in 2006.

Commissioner Baum of the Oregon Public Utility Commission is correct in his assessment that the recommended decision “failed to address some basic inequities in how High Cost support is distributed among non-rural ILECs and among the states.”<sup>13</sup> Inequitable distribution of support to states has been compounded by the equal support rule for CETCs. The current FCC rules have resulted in a vast misallocation of public dollars to the benefit of only a small portion of rural consumers, and to the detriment of the rest.”<sup>14</sup> Before the FCC considers a new high-cost structure, it must revise the current fatally flawed allocation of funds to make it more equitable to states like those in the MACRUC region.

Finally, the Commission must assure that current Lifeline/Link-Up recipients not be affected in any way during the transition to a restructured high cost funding mechanism. These consumers are the most vulnerable and the most deserving of support from a federal fund that was established to ensure that all consumers that wish to have access to a telephone may do so.

## CONCLUSION

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<sup>12</sup> *Joint Board Recommendation*, Statement of State Commissioner-Member Larry Landis, p. 37.

<sup>13</sup> *Joint Board Recommendation*, Statement of State Commissioner-Member Ray Baum, p. 34.

<sup>14</sup> *Joint Board Recommendation*, Statement of State Commissioner-Member Ray Baum, p. 34.

The MACRUC urges the Commission to revise the FUSF by immediately eliminating the identical support rule, and give serious consideration to implementing a reverse auction for the distribution of high cost funds. This will reduce the fund and the burden on MACRUC ratepayers. The Commission should reject the proposal for new mobility and broadband funds.



On behalf of the Delaware Public Service Commission

/s/ Arnetta McRae

Chair

/s/ Joann T. Conaway

Commissioner

/s/ Jaymes B. Lester

Commissioner

/s/ Dallas Winslow

Commissioner

/s/ Jeffrey J. Clark

Commissioner

For the Public Service Commission of the District of Columbia

/s/ Agnes A. Yates

Chairperson

/s/ Richard E. Morgan

Commissioner

/s/ Betty Ann Kane

Commissioner

On Behalf of the New Jersey Board of Public Utilities:

\_\_\_\_\_/s/\_\_\_\_\_  
JEANNE M. FOX  
PRESIDENT

\_\_\_\_\_/s/\_\_\_\_\_  
FREDERICK F. BUTLER  
COMMISSIONER

\_\_\_\_\_/s/\_\_\_\_\_  
NICHOLAS ASSELTA  
COMMISSIONER

\_\_\_\_\_/s/\_\_\_\_\_  
JOSEPH L. FIORDALISO  
COMMISSIONER

\_\_\_\_\_/s/\_\_\_\_\_  
CHRISTINE V. BATOR  
COMMISSIONER

COMMONWEALTH OF PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Docket No. 96-45

Wendell F. Holland, Chairman  
Commonwealth of Pennsylvania,  
Public Utility Commission

/s/

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On behalf of the Commonwealth of Pennsylvania,  
Public Utility Commission

/s/ \_\_\_\_\_  
Joseph K. Witmer, Esq.  
Assistant Counsel

Dated: April 17, 2008

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

ON BEHALF OF THE VIRGINIA STATE CORPORATION COMMISSION

/s/ Judith Williams Jagdmann

Chair

/s/ Mark C. Christie

Commissioner